

was very sympathetic with the concerns I and others had expressed regarding the impact of EPA regulations on jobs. She also expressed in many instances that she would look for flexibility, but she said she was unfortunately bound by agency processes and the law.

Well, if she is concerned with the impact EPA regulations are having on jobs and communities, I believe she should have sought the flexibility she needed from Congress to help save these communities and these jobs. In a followup to that meeting, I asked in writing: What specific legislative changes would you recommend to provide the flexibility to protect workers, to protect families, to protect communities from job losses that might occur as a result of EPA regulations?

What she stated was "very sensitive to the state of the economy and to the impacts of EPA regulations on jobs." And then, "If confirmed, I would continue to work hard to seek opportunities to find more cost-effective approaches to protecting human health and the environment." This administration has pummeled coal country, powerplants, manufacturing, and small businesses for 4 years, pursuing their preferred version of a clean energy future. Since 2009, unemployment has remained stagnant. Nearly 10 percent of our coal energy capacity is gone. Not once has Ms. McCarthy approached Congress for flexibility in implementing her own rules. I see no reason why that would happen in the future.

I would like to commend EPW ranking member Senator VITTER for leading an effort to secure information from the nominee. I signed a letter, along with Senator VITTER and other members of the EPW Committee, seeking access to the scientific data and the reasoning behind the justification for expensive new rules and regulations that hurt the economy, that cost jobs, seeking true whole economy modeling on EPA's Clean Air Act regulations, so we can understand the true cost of these rules.

I was also seeking an assurance that Gina McCarthy and this administration honor its commitment to transparency and stop using delay tactics to keep the true cost of these regulations from the American people. Senator VITTER was able to get some information on many of our requests. It was not easy and the nominee was not entirely forthcoming. In fact, she has not complied with many of the document requests we have made. I can assure the administration that none of us who signed that letter making these requests plan on giving up on securing basic information that should be readily available to the public.

Gina McCarthy is the wrong candidate to head the Environmental Protection Agency. America deserves better. I would ask that my colleagues oppose the nomination not on the content of this administration's policies but on the actions of this specific

nominee with regard to accountability, competence, and transparency. I believe this nominee gets a failing grade on all three counts.

#### CONCLUSION OF MORNING BUSINESS

The ACTING PRESIDENT pro tempore. Morning business is closed.

#### EXECUTIVE SESSION

#### NOMINATION OF THOMAS EDWARD PEREZ TO BE SECRETARY OF LABOR—Resumed

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will proceed to executive session to consider the following nomination, which the clerk will report.

The legislative clerk read the nomination of Thomas Edward Perez, of Maryland, to be Secretary of Labor.

The ACTING PRESIDENT pro tempore. The Senator from Utah.

Mr. LEE. Mr. President, I rise today to voice my strong opposition to the nomination of Thomas E. Perez to be the Secretary of the U.S. Department of Labor. Simply put, there is no shortage of reasons why Mr. Perez should not be confirmed as our next Labor Secretary.

Several of my colleagues have come to the floor to discuss a number of troubling facts about Mr. Perez's professional history, each one of them reason enough to disqualify him for this nomination. I would like to discuss a few that are of significant concern to me. Without question, Mr. Perez has abused his position as Assistant Attorney General of the Civil Rights Division of the U.S. Department of Justice. Rather than seek out and expose instances of racial injustice, Mr. Perez has turned the office into his own personal tool of political activism, something that office was never meant to accomplish.

For example, a report issued by the Department of Justice Office of Inspector General found during Perez's tenure at the Civil Rights Division employees harassed colleagues for their religious and political beliefs. Despite having little if any evidence of racial discrimination, Mr. Perez has repeatedly opposed efforts by States to ensure the integrity of elections.

Under his direction, the Civil Rights Division has pursued frivolous lawsuits against State voter ID laws, has ignored statutes that require States to purge ineligible voters from their voter registration rolls, and has slow-walked attempts to protect the voting rights of our military members, our brave men and women serving in uniform for the United States.

While head of the Civil Rights Division, Mr. Perez's unit used spurious and misleading claims to allege racial discrimination and selectively enforced laws to target certain groups.

Most troubling, perhaps, was the fact that Mr. Perez has woefully disregarded a lawful subpoena from the House Committee on Oversight and Government Reform to produce certain documents relating to the use of his nonofficial e-mail account for official purposes. According to the chairman of that committee, "Mr. Perez has not produced a single document responsive to the committee's subpoena" and "remains noncompliant."

At a minimum this is a basic violation of the rule of law. It impedes a fundamental function of the legislative branch to provide oversight of the administration. Anyone showing this type of willful disregard for the law and ambivalence toward America's essential principles of representative government should not be considered for a top post in any administration.

I therefore strongly advise my colleagues not to support this nominee and to raise similar objections whenever someone comes up and is nominated by this President or any President who possesses and displays these characterizes that are so troubling.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Connecticut.

#### MILITARY SPENDING

Mr. BLUMENTHAL. Mr. President, I am here to speak on behalf of my good friend Gina McCarthy and her nomination to head the Environmental Protection Agency. But before I do so, I would like to raise an issue I raised during a hearing of the Armed Services Committee. I have come directly from that hearing.

I am here to express my deep dissatisfaction, in fact my outrage, at a form of military assistance that will literally waste a total of more than \$1 billion in taxpayer money. In fact, we have just contracted and announced that contract in June for about 30 Russian Mi-17 helicopters that will cost American taxpayers \$550 million to buy from Rosoboronexport, the Russian export agency, controlled by the Russian Government, those helicopters for the Afghan national forces that lack pilots and maintenance personnel to fly and repair and operate these helicopters. They will be sitting on the runways of Afghan airfields without any use, rusting, literally wasting American taxpayer funds.

Don't believe me when I make these statements. Those facts come from the Special Inspector General for Afghanistan who completed a report recently, stating succinctly, clearly, irrefutably, that we are wasting \$1 billion in taxpayer money buying Russian helicopters for Afghan national forces that, very simply, cannot use them.

In fact, we committed to that contract before we even have a status of forces agreement with the Afghan Government for the period after 2014 when we will be leaving that country, fortunately. If we can leave sooner, all the better. But in the meantime, we are buying equipment from the Russian export agency that is at the same time

selling arms to Assad in Syria for the murder and slaughter of his own people, making money from those sales to Assad in Syria, and from the government that is harboring and providing refuge to Edward Snowden, who has illegally—I guess I should use the words allegedly illegally—but clearly violated American law in disclosing secrets from our government.

Last week I visited a National Guard helicopter repair facility in Groton, CT, where over 100 technicians—to be precise, 137 technicians—civilian employees at this facility alone have been furloughed. They are furloughed 11 days. It was originally 22, but it has been reduced to 11. Our helicopter repair function in that region, and similarly across the country, has been hampered and impeded because of the sequester and the impact in requiring furloughs. Our military readiness is suffering because of lack of funds on the part of the U.S. Government, when we are at the same time buying Russian helicopters that will have no use for the Afghan Government. In fact, they have no pilots to fly them or people to make repairs and maintain them. Something is wrong with this picture.

Yet in the hearing I have just left, the Chairman of the Joint Chiefs of Staff, General Dempsey, maintained to me his view that a waiver should be exercised under the National Defense Authorization Act providing for the purchase of these Russian helicopters.

I respectfully disagree. I strongly disagree. I think the American taxpayers, certainly my fellow residents of Connecticut, ought to be equally outraged. We should be outraged in this body that we are wasting this money when precious funds have been forgone that can be used for military readiness of our Armed Forces.

I ask my colleagues to join me in saying to our U.S. military leaders that our national security is imperiled, not by refusing to acquire those helicopters but in fact by wasting taxpayer money on those purchases for an Afghan army that cannot use them, and for purchasing from a country that certainly means us no good and, in fact, an export agency that is selling arms to a murderous government and harboring an individual who has violated our laws and endangered our national security.

I will not let this matter rest. I will not let this issue go. I intend to pursue it. I ask my colleagues to join me in making sure we stop these purchases. In fact, Senator AYOTTE and I have a bill, which is called No Contracting with the Enemy, to expand very useful contracting tools that now apply in Afghanistan, where we have found our aid and assistance finding its way to enemy hands. I can't think of a more blatant example of contracting with the enemy than handing over our taxpayer money to a company that is at the very same time selling S-300 air defense systems to the Syrian Govern-

ment for use against its own people and violating international sanctions by helping Iran with that missile equipment.

#### MCCARTHY NOMINATION

I wish to turn to the reason I came to the floor, having just left that Armed Services Committee meeting, to speak on behalf of my very good friend Gina McCarthy.

I worked with Gina McCarthy over a number of years when she was, in fact, not only a fellow State official—I was then State attorney general—but also a client because I was her lawyer. I came to know her in a way that I think is very rare for any public official to know another, seeing her in times of crisis and public policy opportunity, the ups and the downs of public service.

I came to know her as a pragmatic person of consummate intelligence, integrity, an environmental protector for all seasons. She is not a partisan by any stretch of the imagination. There may be individuals who are more aggressive in the enforcement of environmental laws. There may be people who are more solicitous of economic progress and job creation, but I don't know. I certainly know no one who strikes the balance and seeks both goals of job creation, along with economic growth, and environmental protection with such zeal, passion, and great good humor.

I said before on this floor and I will say it again, Gina McCarthy knows how to bring people together. She knows how to work for a common goal.

We should seize this moment as a body to expand and enhance the bipartisan spirit of this past week and approve Gina McCarthy overwhelmingly because she epitomizes the kind of bipartisan spirit we should seek to grow and attract in our Federal Government, in fact, in all levels of government.

Let me give a few examples. My colleague Senator MURPHY spoke last night about a number of her specific accomplishments, but there are many more—maybe most important, which I don't think has been given enough attention on the floor, is her work in designing, building, and implementing the Northeast's pioneering cap-and-trade program, known as the Regional Greenhouse Gas Initiative, RGGI. Nine States currently participate in RGGI: Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont. It is a highly innovative program. It is a model for the Nation and the world.

A 2012 report issued in 2012 estimates that RGGI investments will offset the need for more than 27 million megawatt hours of electricity generation and 26.7 British thermal units of energy generation. These savings will help avoid the emission of 12 million short tons of carbon dioxide pollution, an amount equivalent to taking 2 million passenger vehicles off the road for 1 year.

The numbers not only fail to tell the whole story about the environmental

impact but also fail to tell about Gina McCarthy's role in bringing together Republican and Democratic Governors for a common good, what she will do in this country for environmental protection and what she has already done in her role at the EPA.

Under her guidance, the State of Connecticut settled a Clean Air Act suit against Ohio Edison on July 11, 2005, again requiring pollution reduction consistent with business needs and goals.

She settled a citizen suit against American Electric Power on December 13, 2007, a dramatic reduction in nitrogen oxide and tons of sulfur dioxide. These Clean Air Act suits, which I assisted her in bringing to conclusion, I think embody her goal of reducing air contamination and pollution consistent with the business community's concern for its bottom line. She is sensitive to both.

She is remarkable for her professionalism, for her zeal and passion as an environmental protector, and also for her willingness to listen, her willingness to hear and truly listen to people sitting across the table who may come into the room with different and sometimes conflicting views and come to a common conclusion. She knows how to get to yes, and she does it as a tough, fair, balanced environmental law enforcer.

I hope my colleagues will join me in my enthusiasm because the President couldn't have picked a more qualified person. Gina McCarthy is as good as it gets in public service. She is as good as it gets for integrity, intellect, and dedication to the public good.

It is my wish that we will move forward as united as possible, carrying forward the great bipartisan spirit that has characterized these last few days in our consideration of the President's nominees, which I hope will be enhanced and continue as we move forward today.

I yield the floor.

The ACTING PRESIDENT pro tempore. The Republican whip.

#### OBAMACARE

Mr. CORNYN. In a few minutes, President Obama is scheduled to give a major speech highlighting what he believes are the achievements of his signature health care law, the Affordable Care Act, otherwise known as ObamaCare.

I could understand why he is feeling a little defensive and why he feels he needs to frame the discussion because, after all, ObamaCare has disappointed some of its most ardent former supporters.

For example, back in 2009 and 2010, American labor unions were among the biggest supporters of the President's health care plan. Along with many of my friends across the aisle, they are having second thoughts and, in some cases, buyer's remorse.

Last week, three of the country's most prominent labor leaders, James Hoffa, Joseph Hansen, and Donald Taylor, sent a very concerned letter to

Senator REID and former Speaker PELOSI. Here is part of what they wrote:

When you and the President sought our support for the Affordable Care Act, you pledged that if we liked the health plans we have now, we could keep them. Sadly, that promise is under threat.

Picking up on this chart, they went on to say:

Right now, unless you and the Obama Administration enact an equitable fix, the ACA [Affordable Care Act] will shatter not only our hard-earned health benefits, but destroy the foundation of the 40-hour workweek that is the backbone of the American middle class.

They went on to say:

The unintended consequences of the ACA [Affordable Care Act] are severe. Perverse incentives are already creating nightmare scenarios. . . . The law, as it stands, will hurt millions of Americans.

ObamaCare has been controversial since its passage in 2010. Some Members of Congress voted for it. Obviously, the Democratic majority voted for it. Some people voted against it, people such as myself in the Republican minority.

But whether you supported the law with the hopes and aspirations that it would somehow be the panacea or answer to our health care needs in this country or whether you were a skeptic such as I, who believed that this could not possibly work, the fact seems to be—as these labor leaders have said—it has not met expectations and certainly it has created many problems that need to be addressed.

This same letter went on to detail some of the nightmare scenarios these labor leaders have concerns about. They pointed out that many businesses are cutting full-time employment back to part-time in order to avoid the employer mandate.

As I mentioned yesterday, the number of people working part-time for economic reasons has jumped from 7.6 million to 8.2 million, just between March and June. In fact, last month alone that number increased 322,000.

A new survey reports that in response to ObamaCare, nearly three out of every four small businesses are going to reduce hiring, reduce worker hours or replace full-time employees with part-time employees.

We know the President has unilaterally decided to delay the imposition of the employer mandate until 2015, but that doesn't change a lot. These businesses have to plan for the future and small businesses still have the same perverse incentives to limit the hiring of full-time workers, as these labor leaders point out.

The employer mandate is one reason why ObamaCare needs to be repealed entirely and replaced with something better. As these leaders say in their letter, the law, as it stands, will hurt millions of Americans.

We have already seen its effect on job creation, not only with the employer mandate but also with the medical device tax that has prompted many com-

panies, including those in Texas, to simply grow their businesses in places such as Costa Rica, where they can avoid that medical device tax, rather than in my State or in other States that have medical device companies. It has also caused these companies to close factories and cancel plans for new ones in the United States.

We have also seen, as these leaders point out, that ObamaCare will disrupt Americans' existing health care arrangements. As they point out in their letter, one of the promises the President made was that if you liked what you have, you can keep it, but, in fact, that has not proven to be true.

Indeed, my constituents are already getting their letters from health care providers informing them that their current policies are no longer going to be available because of the implementation of ObamaCare. Millions of people will eventually have that same experience, according to the Congressional Budget Office.

Why have we made this huge shift in one-sixth of our economy? What was the goal of the proponents of this piece of legislation? What we were told is that it was universal coverage. There were too many people who didn't have health care coverage. But as for this promise of universal coverage, I am afraid that is another broken promise as well.

According to the Congressional Budget Office, even if ObamaCare is fully implemented on schedule, there will still be 31 million people in America without health insurance by the year 2023. Even though the proponents of ObamaCare said we need to do this, as expensive as it is, as disruptive as it is to the existing health care arrangements, we need to do this because everybody will be covered, that promise is not going to be kept either.

Let me repeat, 13 years after the passage of ObamaCare, America will still have 31 million uninsured. Meanwhile, many of the newly insured under ObamaCare will be covered by Medicaid, a dysfunctional program that is already failing its intended beneficiaries.

I, perhaps unwisely, decided during the markup of the Affordable Care Act in the Senate Finance Committee to offer an amendment that said Members of Congress will henceforth be put on Medicaid. I told my colleagues that I knew if Congress was covered by Medicaid we would do our dead-level best to fix it because, as it exists now, it is a dysfunctional program. It is dysfunctional for this reason: Giving people coverage is not the same thing as access. Many Medicaid recipients have a very hard time finding doctors who will accept Medicaid coverage because the program reimburses providers at such low rates. In my State, it is about 50 cents on the dollar as compared to private coverage. In my State of Texas, fewer than one-third of physicians will accept a new Medicaid patient, and many of them are accepting no new Medicaid patients.

Most Texas physicians believe Medicaid is broken and should not be used as a mechanism to expand coverage, certainly if it is not fixed and reformed, which it needs to be. By relying on Medicaid as one of the primary vehicles for reducing the number of uninsured in America, the Affordable Care Act will make the program even more fragile and weaker and less effective at securing dependable health care for the poor and the disabled, the very people it is designed to protect.

We also have good reason to fear ObamaCare's Medicaid expansion will reduce labor force participation. A new National Bureau of Economic Research paper argues ObamaCare "may cause substantial declines in aggregate employment." Rather than expand and damage an already broken system, the Federal Government should give each State more flexibility to manage the Medicare dollars that come from Washington so they can provide better value for recipients and taxpayers.

Right now, State policymakers can't manage Medicaid without first going through a complicated waiver process and obtaining Federal approval—too many strings attached. Ideally, Washington would give each State a lump sum—a block grant, if you will—as well as the freedom to devise programs that work best in their States and for the population covered.

Meanwhile, we should adopt health care reforms that would make health care more affordable and accessible to everyone—for example, equalizing the tax treatment of health insurance for employers and individuals; expanding access to tax-free health savings accounts so people can save their money, and if they don't use it for health care, they can use it for other purposes, such as retirement. We should let people and businesses form risk pools in the individual market, including across State lines. We should improve price and quality transparency.

One of the most amazing forces in economics is consumer choice and transparency and competition. It is called the free enterprise system, and we see it at play in the Medicare Part D Program, for example, one of the most successful government health care programs devised. We made a mistake when we passed Medicare Part D because it was not paid for—it should have been—but it has actually come in 40 percent under projected cost and it enjoys great satisfaction among its beneficiaries, seniors who have access to prescription drugs, some of them for the first time. But the reason why it has come in 40 percent under cost is because companies have to compete for that business, and they compete—as they always do in the marketplace—on price and quality of service, and we get the benefit of that market discipline.

We also need to address frivolous medical malpractice lawsuits—something my State has done at the State level, which has made medical malpractice insurance more affordable and

which has caused many doctors to move to Texas who otherwise might not have gone there, providing greater access to health care.

As I have said, we also need to allow the interstate sale of health insurance policies. There is no reason why I shouldn't be able to buy a health insurance policy in Virginia if it suits my needs better than one available in Texas. Why would we not allow that? Again, why would we not want the benefit of that competition and the benefits to the consumer in terms of service and price?

We also need to boost support for State high-risk pools to protect Americans with preexisting conditions. This is one of the reasons why the President and other proponents of ObamaCare said we have to have ObamaCare, because we need to deal with preexisting conditions, and we do. But we can do it a lot cheaper and a lot more efficiently by using Federal support for existing State preexisting condition high-risk pools. We don't have to take the whole 2,700-page piece of legislation that cost us several trillion dollars. We can do it much cheaper and more efficiently.

Finally, we need to save Medicare by expanding patient choice and provider competition. These policies would allow us to expand quality insurance coverage and improve access to quality health care without disrupting people's existing health care arrangements, without discouraging work and job creation, without raising taxes on medical innovation, and without weakening Medicaid and Medicare.

The chairman of the Senate Finance Committee, one of the principal Senate architects for the Affordable Care Act, famously described the implementation of ObamaCare as a train wreck. These three leaders of American labor would agree, and they have also warned us that unless we fix it, it could destroy the very health and well-being of millions of hard-working Americans.

It is time for us to acknowledge the reality that whether you were a proponent and voted for ObamaCare or whether you were an opponent and a skeptic that it would actually work, we need to deal with the harsh reality and the facts that exist. It is time for Democrats, including the President, to work with us to replace ObamaCare with better alternatives.

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. REID. Mr. President, if my friend from Virginia will yield to me for the purpose of doing a unanimous consent request, we have an agreement as to how we will proceed with votes.

Mr. KAINE. I have no objection.

The ACTING PRESIDENT pro tempore. The majority leader.

Mr. REID. Mr. President, I ask unanimous consent that the vote on the confirmation of the Perez nomination as Secretary of Labor occur at 12:15 p.m. today; that if the nomination is confirmed, the motion to reconsider be

considered made and laid upon the table with no intervening action or debate; that no further motions be in order; that any related statements be printed in the RECORD; and the President be immediately notified of the Senate's action; further, that following disposition of the Perez nomination, the time until 2:30 p.m. be equally divided in the usual form prior to the cloture vote on the McCarthy nomination.

The ACTING PRESIDENT pro tempore. Is there objection?

Without objection, it is so ordered.

Mr. REID. Mr. President, while I have the floor, I want the RECORD to reflect how fortunate the State of Virginia is for the work done by this good man. We have a good situation with our delegation from Virginia—two former Governors, and they are both such outstanding human beings and wonderful Senators.

As I have told my friend personally, the person whom I just interrupted—and I spread this in the RECORD here—there is no one I know in the Senate who is able to deliver the substance of what he says as well as the Senator from Virginia. He does such a good job of explaining things. We all have an idea of what we want to say, but sometimes we don't explain it very well. He does an excellent job.

The ACTING PRESIDENT pro tempore. The Senator from Virginia.

Mr. KAINE. I thank the majority leader for his kind words.

#### WAR POWERS RESOLUTION OF 1973

Mr. President, I rise in order to note an important anniversary. Forty years ago this week the Senate passed the War Powers Resolution of 1973. The resolution was passed in a time of great controversy—during the waning days of the Vietnam war. The purpose of the resolution was to formalize a regular consultative process between Congress and the President on the most momentous decision made by our Nation's Government—whether to engage in military action.

The question of executive and legislative powers regarding war dates back to the Constitution of 1787. Article I, section 8 of the Constitution provides that "Congress shall have the power . . . to declare war." Article II, section 2 of the Constitution provides that the President is the "Commander in Chief" of the Nation's Armed Forces. In the 226 years since the Constitution was adopted, the powers of the respective branches in matters of war have been hotly debated. In a letter between two Virginians in 1798, James Madison explained the following to Thomas Jefferson:

The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch most interested in war, and most prone to it. It has accordingly, with studied care, vested the question of war in the legislature.

Madison's definitive statement notwithstanding, the intervening history has been anything but definitive. Aca-

demics and public officials have advanced differing interpretations of the constitutional division of power. There is no clear historical precedent in which all agree the legislative and executive branches have exercised those powers in a consistent and accepted way. And the courts have not provided clear guidance to settle war powers questions.

Some facts, however, are very clear. The Congress has only formally declared war five times. In many other instances, Congress has taken steps to authorize, fund, or support military action. In well over 100 cases, Presidents have initiated military action without prior approval from Congress.

Congress supposed 40 years ago that the War Powers Resolution of 1973 would resolve many of these questions and establish a formal process of consultation on the decision to initiate military action. But this was not the case. President Nixon vetoed the resolution, and while Congress overrode the veto, no administration since has accepted the constitutionality of the resolution. Most recently, President Obama initiated American involvement in a civil war in Libya without congressional approval. The House of Representatives rebuked the President for that action in 2011. But the censure rang somewhat hollow because most legal scholars today accept the 1973 resolution is an unconstitutional violation of the separation of powers doctrine.

So why does this matter? We are in the 12th year of war. The attack on our country by terrorists on September 11, 2001, was followed 1 week later by the passage of an authorization for use of military force that is still in force today. The authorization is broadly worded and both the Bush and Obama administrations have given it an even broader interpretation.

In recent hearings before the Senate Armed Services Committee, administration officials expressed the opinion the authorization of September 18, 2001, might justify military action for another 25 to 30 years in regions spread across the globe against individuals not yet born or organizations not yet formed on 9/11. This was likely not contemplated by Congress or the American public in 2001.

Congress is currently grappling with the status of the authorization and whether it should be continued, repealed, or revised. We face immediate decisions about the reduction of American troops in Afghanistan and the size of a residual presence we will leave in that country to support the Afghan National Security Forces. We are wrestling with the scope of national security programs that were adopted in furtherance of the authorization, and we are engaged in serious discussion about new challenges—from the rebellion in Syria to growing nuclear threats in Iran and North Korea.

All of these issues are very hard. I recently returned from a trip to the Middle East—a codel sponsored by Senator

CORNYN. Accompanying us were Senators COCHRAN, SESSIONS, BOZEMAN, FISCHER, and in Afghanistan, Senators MCCAIN and GRAHAM.

In Turkey and Jordan we heard about the atrocities committed by the Asad regime in Syria and the flood of refugees pouring into those neighboring countries. In Afghanistan we met with our troops and heard about the slow transition from NATO forces to Afghan security. In the United Arab Emirates we discussed the growing threat of Iran throughout the region, and we made a meaningful stop at Landstuhl Regional Medical Center in Germany to visit recently wounded Americans—and NATO partners—who have sacrificed so much in this long war against terrorism. In the voices of our troops, our diplomats, our allies, and our wounded warriors, we heard over and over again a basic question: What will America do?

Answering this question isn't easy, but I believe finding answers is made more difficult because we do not have any agreed-upon consultative process between the President and Congress. The American public needs to hear a clear dialogue between the two branches justifying decisions about the war. When Congress and the President communicate openly and reach consensus, the American public is informed and more likely to support decisions about military action. But when there is no clear process for reaching decision, public opinion with respect to military action may be divided, to the detriment of the troops who fight and making it less likely that government will responsibly budget for the cost of war.

I believe many more lawmakers, for example, would have thought twice about letting sequestration cuts take effect if there had been a clear consensus between the President and Congress about our current military posture and mission.

So at this 40th anniversary, I think it is time to admit that the 1973 resolution is a failure, and we need to begin work to create a practical process for consultation between the President and Congress regarding military action.

In 2007 the Miller Center at the University of Virginia impaneled the bipartisan National War Powers Commission under the leadership of former Secretaries of State James Baker and Warren Christopher. The Commission included legislative, administrative, diplomatic, military, and academic leadership. The Commission issued a unanimous report to the President and Congress urging the repeal of the War Powers Resolution and its replacement by a new provision designed to promote transparent dialog and decision-making. The Commission even proposed a draft statute, preserving the constitutional powers of each branch while establishing a straightforward consultative process to reach decision in a way that would gain support from the American public. The House and

Senate Foreign Relations Committees held hearings on the report in 2008, but the time was not yet right for change.

I believe the time for change is upon us. We struggle today with urgent military decisions that demand better communication between the President, Congress, and our citizens. President Obama has discussed this very need during his 2013 State of the Union Address and also during his recent speech at the National Defense University.

As we reach the 40th anniversary of the failed War Powers Resolution, Senator JOHN MCCAIN has agreed to work with me to form a group of Senators committed to finding a better way. Senator MCCAIN and I serve together on both the Armed Services and Foreign Relations Committees. I have profound admiration for his service to this country, both as a military veteran and a veteran Senator. I am a newcomer, but veterans and newcomers alike have an interest in finding a more effective process for making the most important decision that our government ever makes—whether to initiate military action. We can craft a process that is practical, constitutional, and effective in protecting our Nation. We owe this to those who fight, and we owe this to the American public.

Mr. President, I yield the floor, and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. RUBIO. Mr. President, I ask unanimous consent the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. RUBIO. Mr. President, I ask unanimous consent that I be recognized to speak for up to 12 minutes as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### OBAMACARE

Mr. RUBIO. Mr. President, just a few moments ago I heard the President speaking from the White House regarding ObamaCare. He was lamenting, saying: Why are we still litigating old news around here? Let's move on to other things. This issue has been finished.

The reason this issue is still being talked about is because ObamaCare is a disaster. I think it is important to remember when we talk about health insurance that most Americans do have health insurance they are happy with. But no one would dispute that we have a health insurance problem in this country.

For many who have insurance the cost of their insurance is getting unaffordable, and many others have no access to insurance at all. They have a job, perhaps, that doesn't provide it or they are chronically ill so insurance is impossible for them to find or they are

young and healthy and they never go to a doctor, so they figure, why do they need it? Yes, for millions of people the cost and availability of insurance is a real problem, and we should do something about that.

The problem is ObamaCare, as a solution, is a massive government takeover of health insurance in America, and it does not fix the problem. It only makes it worse, and that is why we are still talking about it. It makes it worse for a number of reasons.

Tomorrow I am going to visit a business in Florida where the reality is growing every single day. Tomorrow I will visit Gatorland. Gatorland is in central Florida. It is a tourist destination where many Floridians and tourists have taken their kids to see alligators and to enjoy Florida's unique wildlife.

For 135 Orlando area residents, however, Gatorland is their workplace. It is their livelihood. It is how they feed their families. It is how they pay their mortgages. It is how they get ahead in life. The reason we are still litigating this, Mr. President, is because like hundreds of thousands of other businesses around the country, ObamaCare is threatening to unravel it all. It is threatening to unravel the livelihood of 135 Floridians who work at Gatorland, to shatter their financial security for them and their families.

Let me describe the problem. Gatorland has 135 full-time employees. Gatorland is currently paying 80 percent of the insurance cost for these employees. But now, under ObamaCare, evidently what they are doing is not going to be enough. ObamaCare, first of all, requires them not to just provide insurance but to provide for them a certain type of insurance, a type of insurance the government decided is enough.

Second, because of ObamaCare, the cost of the insurance that Gatorland wants to provide for its employees is going to go up; that is, if they want to continue to pay 80 percent of the insurance costs for the 135 Floridians who work there, it is going to cost them a lot more money. Those are the two problems.

No. 1 is they have to offer a certain type of insurance; the one they have potentially may not be enough according to the government. No. 2, because of all these changes, it is going to cost Gatorland more money to provide 80 percent of the cost of the insurance.

What does this mean in the real world? Here is what it means. It means that as Gatorland looks to next year and into the future, they now have a new cost on their books. As they look at their business plan for the coming year, all of a sudden they see on the cost side it has gotten more expensive. So if they want to stay in business, they are going to have to figure out a way to come up with that extra money.

What are their options to come up with this extra money? Option No. 1 is they can raise their prices. Option No.

2 is they can cut back on expenses, such as the number of employees and benefits and hours. Option No. 3 is just not to comply at all with ObamaCare and pay a fine. Basically, don't offer insurance to these employees; let them go off and find it in the so-called exchanges and pay a fine to the IRS.

I ask you, Mr. President, and I ask the people of this country, and I ask my colleagues, which one of these three options is good for our country? Which one of these three options is good for America, and which one of these three options is good for the 135 people who feed their families by working at Gatorland?

If they raise their prices, that means the cost of going to Gatorland will go up. I understand our economy is not doing very well these days. Millions of people are underemployed and unemployed. They are working twice as hard and making half as much, and you are going to make it more expensive for them to go on vacation. I would argue that raising their prices is probably not an option available to them anyway. Gatorland is not Disneyland and not Universal, and it is not one these big tourist destinations. It is a small place that has to compete, and if you raise prices there comes a point where people just will not go.

Not only is raising prices bad for our economy and people who want to visit Florida and take their families there, it might not even be feasible. So that certainly is not a good option. It may not even be an option at all.

The second option is they would have to cut down on their expenses with their employees. That means they can lay off some people; find the money by instead of having 135 employees, try to get by with 125 employees. That could mean not laying off people but as people retire or quit just not replacing them. That could also mean moving some of these people who are working full time to part time so they can get around the ObamaCare mandates, and so they can lower their costs. How is that good for our economy? How is that good for 135 people who work at Gatorland? How is that good for Florida? How is that good for us?

The third option is they could pay the fine, but it is going to cost at least 135 people in my State the insurance they are happy with. I want you, Mr. President, to remember what you said—in fact what you repeated today in your statements a moment ago at the White House. You said if you are happy with your insurance, you can keep it. For 135 people working in Gatorland in central Florida, that may not be true. They could lose their insurance that is working well for them, that they are happy with, because of this experiment. That is why we keep revisiting this issue.

Interestingly enough, by the way, that is not just me saying that. This week some prominent labor unions, labor unions who are actually in favor of this law—lead among them was the

Teamsters head, Jimmy Hoffa—wrote a letter to the President attacking this very point. They said the new law is breaking the promise that was made that if you are happy with your coverage, you are not going to lose it.

I single out Gatorland because that is the real world. That is where I am going tomorrow, and that happens to be in my State. There are thousands of businesses like this that are facing these decisions. There is not one, there are hundreds of thousands of businesses that are facing this dilemma, that have these same concerns.

By the way, this is not the only problem with ObamaCare. There are many others. The President keeps saying: There are people in town who want this plan to fail. They keep bringing up ObamaCare because they want it to fail.

The plan is already failing. It is failing by your own admission. You just had to cancel, had to suspend one of the critical components of this bill because it is not doable. This plan is already failing on its own.

By the way, if you are going to accuse us of wanting ObamaCare to fail, you better accuse the Teamsters of it because they have the same criticisms on this point that I have raised today.

I think we have reached a point where no matter how you voted on ObamaCare—I was not here, but no matter how you may have voted on ObamaCare if you were here, no matter who you voted for for President, no matter if you are a Republican, a Democrat, or an Independent, it is bigger than politics—this is really about people. Today I highlighted the plight that 135 people in Florida are facing, but hundreds of thousands if not millions of others will soon face this plight as well. As Americans, we have to come to grips with the fact that this law is a terrible mistake, and we cannot go forward with it because it is going to hurt millions of middle-class Americans in the ways I have just described.

We are going to have an opportunity to get this right in September because we are going to have to vote on a short-term budget to fund the government. I implore my colleagues to use that as an opportunity to put the brakes on this terrible mistake before more people lose their insurance, put the brakes on this before more people lose their jobs, put the brakes on this before more people lose their businesses. In that short-term funding bill, we should not pay for the implementation of ObamaCare. Let me be clear. Anyone who votes for the short-term budget that funds ObamaCare is voting to move forward with ObamaCare. Don't come here and say "I am against ObamaCare" if you are willing to vote for a budget that funds it. If you pay for it, you own it.

I want to make myself clear to the employees of Gatorland, the working people of Florida, and anyone in America who is watching that I, for one, will not vote for any bill or any budget that

funds the implementation of this disaster. Does that mean we shouldn't do anything about health insurance in America? Of course it doesn't mean that. We should do something—something that protects what is good about the current system and fixes what is bad with it. ObamaCare throws out what is good about the current system in order to try to fix what is bad with it, and in the end it messes up everything.

We should repeal ObamaCare and replace it. We should replace it with ideas that allow uninsured and underinsured Americans to find affordable insurance without taking away other people's insurance and other people's jobs.

For example, we should expand flexible savings accounts. These are accounts like the ones to which every Member of Congress has access. That allows us to take money out of our paycheck every month tax free and put it in a savings account for health purposes. We don't have to pay taxes on that money. A deposit is made every month, and it starts adding up. That money can be used to buy medicine or to pay for a copayment or any other medical expense. It is our money, and we control it. It has to be used on health care, but it is tax free. If Members of Congress get this, why shouldn't every American have a chance to have something like that?

I used that account last year to pay for my daughter's braces. Millions of Americans should have the chance to do that. Why don't they? Because ObamaCare undermines it instead of encouraging it. It lowered the amount we can save every year from \$5,000 to \$2,500. Ridiculously enough, it says that in order for me to pay for children's Advil for my kids with my flex savings account, I have to get a prescription from a doctor. Think about that. If you buy children's Advil because your child has a fever, you now have to go to a doctor and get a prescription if you want to use your money to pay for it. Instead of encouraging the flex savings account, ObamaCare undermines it.

Another good idea would be to allow people to buy insurance with their own tax-free money. Let's use the example of Gatorland. Let's say that the monthly premium is \$1,000 and Gatorland pays \$800 of it. They don't pay taxes on that \$800. But let's say that tomorrow a business like that decides it is going to give you the \$800 so you can go out and buy insurance from any company. If it does that, you have to pay taxes on the \$800. If the employer buys the insurance for you, they don't pay taxes on the money. If you buy insurance for yourself, you pay taxes on the money. That is ridiculous. That is something we should be for.

Here is another one. Why can't we Americans buy insurance from any company that will sell it to us? I live in Florida. If there is a company in Georgia that will sell me health insurance, why can't I buy it? I can't buy it



because they are not licensed by the State of Florida. This ignores the fact that every American needs a different type of health insurance.

If you are like me, with four children, you need a family plan that will cover a lot of things, and that will cost more.

What if you are a 25-year-old healthy single person who hardly ever gets sick? What you probably want is a hospitalization and catastrophic insurance account and a health savings account. The health savings account can be used if you get the flu, so you can take out \$50 or \$100 with the tax-free money you have saved and pay for the doctor's visit. If, God forbid, you get hit by a car, your insurance steps up and pays for it. A plan such as that is a lot more affordable, but right now you can't buy it. Most States have rules, and most of the rules say: You either have to sell them a Cadillac or nothing at all. What if you don't want a Cadillac? What if you want a Geo? The same is true with health insurance, and it is wrong. We should encourage those things.

It is not too late to change all of this. It would be a terrible mistake to move forward. This is not about defeating a President's agenda or wanting or rooting for it to fail. We do have a health insurance problem, and we should address it. What we are doing now is going to hurt an economy that is already struggling. There are people who will lose their jobs, lose hours at their jobs, paychecks will be cut, and they will lose the health insurance they are happy with. There are businesses in America that are going to be forced to absorb these costs by laying people off or raising prices or both. There are people who will lose coverage now and be thrown into exchanges that don't exist yet. This is a disaster. We should take the time to slow this down, and we will have a chance to do that in September.

I will repeat it. I, for one, will not vote for any budget that funds the implementation of this disaster and hurts people in this way. I hope my colleagues will put partisanship and pride aside and come together. The fact is that if ObamaCare goes through and begins to be implemented, it is going to hurt us in ways that are potentially irreversible. It is not too late to stop.

I yield the floor.

The PRESIDING OFFICER (Ms. HEITKAMP). The Senator from Iowa.

Mr. HARKIN. Madam President, I am pleased we are finally at the point where we can vote on the nomination of Thomas Perez to serve as Secretary of Labor. Indeed, it seems as though the most important question before us today has gotten lost in all of the debate. Will Tom Perez be a good Secretary of Labor? The answer is unequivocally yes. There is no question that he has the knowledge and experience needed to guide this critically important agency.

His outstanding work in Maryland as their secretary of labor has won him

the support of the business community and workers alike. Here is a quote from the endorsement letter from the Maryland Chamber of Commerce:

Mr. Perez proved himself to be a pragmatic public official who is willing to bring differing voices together. The Maryland Chamber had the opportunity to work with Mr. Perez on an array of issues of importance to employers in Maryland, from unemployment and workforce development to the housing and foreclosure crisis. Despite differences of opinion, Mr. Perez was always willing to allow all parties to be heard and we found him to be fair and collaborative. I believe that our experiences with him here in Maryland bode well for the nation.

That is a pretty strong endorsement by a chamber of commerce for a nominee whom the minority leader this morning characterized as a "leftwing ideologue . . . willing to bend the law to achieve his ideological ends." That is what the minority leader said this morning. That grossly unfair characterization is manifestly inconsistent with the experiences of the Republican leaders and business leaders who have actually worked with Tom Perez. These people clearly disagree with the minority leader's assessment of Mr. Perez's qualifications and character. I am informed that the minority leader never met with Mr. Perez. Mr. Perez offered to meet with him, but the minority leader said no. Yet the minority leader comes down here and makes these kinds of judgments as to his character and his integrity?

We have heard a lot of discussion about the controversy surrounding Mr. Perez's nomination over the last couple of days on the Senate floor. His integrity and character have been viciously and unfairly attacked.

I take particular issue with the minority leader's suggestion this morning that Mr. Perez doesn't follow the law or believe it applies to him. I respectfully suggest that the minority leader needs to check his facts. Those allegations couldn't be more to the contrary. Tom Perez believes deeply in the law. He believes that all the laws on the books, especially those that protect our most important rights—the right to vote, the right to be free from discrimination in the workplace, the right of people with disabilities to live in their own communities—Tom Perez believes strongly that these rights should be respected and enforced. These are the same laws that I sometimes think some on the Republican side would like to forget are on the books, but these laws matter. Voting rights matter. Fair housing rights matter. The rights of people with disabilities matter. And Tom Perez has fought for that.

We shouldn't shy away from using every tool in our arsenal to strengthen our enforcement of civil rights laws. These laws are part of what makes our country great. I am incredibly proud of the work Mr. Perez has done at the Department of Justice to make these rights a reality again after years of neglect. He should be applauded, not vilified, for the service he has provided to this country.

He is a leader whose career has involved passionate and visionary work for justice. Yes, he has had to make difficult decisions. He has faced management challenges. As we now know, he has been the target of accusations, mudslinging, and character assassination. I have looked carefully into Mr. Perez's background and record of service, as the chair of the authorizing and oversight committee. I can assure Senators that Tom Perez has the strongest possible record of professional integrity and that any allegations to the contrary are unfounded. They are simply unfounded allegations. There is absolutely nothing that calls into question his ability to fairly enforce the law as it is written. There is absolutely nothing that calls into question his professional integrity, moral character, or his ability to lead the Department of Labor.

I am particularly disappointed that Republicans continue to raise concerns regarding Mr. Perez's involvement in the global resolution of two cases involving St. Paul, MN—the cases called *Magner* and *Newell*. I spoke about that at length, and Republicans have talked about it. This has been debated exhaustively. Quite frankly, there is nothing there.

This is an issue the HELP Committee and the Judiciary Committee have thoroughly examined and found no cause for concern. The House Oversight and Judiciary Committees have also thoroughly explored the underlying facts. In fact, both the majority and minority staff on the House Oversight Committee have released reports on the matter. What the reports revealed is that the evidence is clear—Mr. Perez acted ethically and appropriately at all times. Indeed, he had clearance to proceed as he did from the appropriate ethics officers at the Department of Justice. Noted experts in legal ethics have confirmed this.

There is no foundation for any allegation of wrongdoing by Mr. Perez in these cases involving St. Paul, MN. Yet they keep being drummed up. But they are just allegations. Anybody can make an allegation—especially here on the Senate floor. Members can make all kinds of allegations. I simply ask for proof. Back up those allegations. There is no proof. There is nothing to back up those allegations that somehow Mr. Perez acted unethically or in violation of law.

I am also deeply disappointed that my Republican friends are suggesting that Mr. Perez has been unresponsive to requests for information by Members of this body. Nothing could be further from the truth. Mr. Perez has been as open and aboveboard as he possibly can be with both my committee and Members of the Senate. He has met with any Member personally who requested a meeting. He requested a meeting with the minority leader, and the minority leader said no. He appeared before our committee in a public hearing. He answered more than 200

written questions. He bent over backward to respond to any and all concerns raised about his work at the Department of Justice.

This administration has also been extraordinarily accommodating to my Republican colleagues—especially to their concerns about Mr. Perez's handling of the *Magner and Newell* cases while at the Department of Justice.

The administration has produced thousands of documents. They have arranged for the interview of government employees and access to transcripts of inspector general interviews. They have provided access to Mr. Perez's personal e-mails. They have facilitated almost unprecedented levels of disclosure to alleviate any concerns. They have responded to every request for information, including the letter by Chairman ISSA that Senator ISAKSON submitted for the *RECORD* this morning.

I ask unanimous consent to have printed in the *RECORD* the response to Chairman ISSA's letter from the Department of Justice at this point.

There being no objection, the material was ordered to be printed in the *RECORD*, as follows:

U.S. DEPARTMENT OF JUSTICE, OFFICE OF THE ASSISTANT ATTORNEY GENERAL,

Washington, DC, July 15, 2013.

Hon. DARRELL E. ISSA,  
Chairman, Committee on Oversight and Government Reform, U.S. House of Representatives, Washington, DC.

DEAR CHAIRMAN ISSA: This is in response to your letter, dated July 8, 2013, to Assistant Attorney General Thomas E. Perez, regarding your request for emails that existed both in Mr. Perez's personal email account and in the Department's email system.

As we explained in our letters of June 21, May 10, May 3, and April 17, 2013, we have gone to great lengths to accommodate the Committee's stated oversight interest in the Federal Records Act and the availability of emails for other records requests. The mails in question that were in Mr. Perez's personal account had also, before your inquiry, already been sent to or from a Department email address and thus were captured by the Department's system pursuant to the Federal Records Act (FRA). Nonetheless, we invited Committee staff to view the date, sender, and recipient fields of these emails so that they could confirm this fact. Indeed, following Mr. Cummings' staff's review of the emails, he wrote to the Department to state that the review had allowed him to "verify that [all the emails] were, in fact, sent from or received by official government e-mail accounts," which addressed his concerns. The substantive content of these emails is not pertinent to an inquiry into FRA compliance.

Only 5 communications initiated by Mr. Perez—and just 30 initiated by others—had not already been captured in the Department's email system prior to your inquiry. When he located these communications, Mr. Perez immediately forwarded them to a Department email address, ensuring that they are now in the Department's system. These 35 communications were made available for review by your staff.

As a result, as we explained in our letter to you on June 21, 2013, we believe that we have addressed your stated oversight interest.

Sincerely,

PETER J. KADZIK,  
Principal Deputy Assistant Attorney General.

Mr. SCOTT. Madam President, I rise today to express my opposition to the nomination of Thomas Perez to be Secretary of Labor.

Given our relentlessly high rate of unemployment over the past 55 months and stagnant economic growth, we simply must do more to foster lasting economic prosperity. After analyzing Mr. Perez's role at the Department of Justice, I do not believe he is the proper candidate to help our Nation return to full employment or reach our economic potential. I have great concerns regarding some of the decisions he has made, the professionalism and ethics of those decisions, and his overall management abilities. The Department of Labor has, unfortunately, pursued guidance and rulemakings that are daunting to large and small businesses alike, and I believe Mr. Perez would only exacerbate these problems.

Mr. Perez accrued an alarming record of mismanagement and utter politicization of the law during his tenure at the Department of Justice, DOJ. The DOJ's inspector general 2013 report gave a highly critical review of the Voting Section under Mr. Perez, citing the "politically charged atmosphere and polarization within the Voting Section" and the "dysfunctional management chain" under Mr. Perez. Furthermore, the report indicated that the handling of the New Black Panther Party case under his leadership "risked undermining confidence in the non-ideological enforcement of the voting rights laws."

When I look at the nonpartisan inspector general report and the way in which Mr. Perez has pursued policies singling out certain conservative States and industries, I simply cannot support his nomination. The Voting Section's decision to override career DOJ staff to block the implementation of my home State of South Carolina's voter ID law is a prime example of this trend. Only after South Carolina spent more than \$3.5 million suing the DOJ in Federal court did our law take effect. Yet, even on the heels of defeat in Federal court, Mr. Perez was still dissatisfied and decided to send DOJ officials down to monitor a special municipal election in Branchville, SC—a town with a voting population of 800 and where fewer than 200 people voted in the special municipal election.

Finally, I believe it is irresponsible and an abdication of congressional authority to move a nominee who has repeatedly failed to comply with an outstanding congressional subpoena. The House Oversight and Government Reform Committee issued a bipartisan subpoena on April 10, 2013, regarding 1,200 e-mails sent from Mr. Perez's non-official e-mail account that referred to official business of the Department of Justice. Mr. Perez's failure to comply with this obligation casts considerable doubt on the deference he would give to Congress as Secretary.

What we need at the Department of Labor is simple: a Secretary who will

put politics aside and a strong management structure in place to help get our economy back on track. States, businesses, and employees cannot afford to have a Secretary of Labor who seeks to micromanage and politicize the most mundane aspects of everyday life. For these reasons, I oppose Mr. Perez's nomination.

Mr. MENENDEZ. Madam President, once again I wish to reiterate my strong support for Tom Perez, a man eminently qualified to serve our country as the next Secretary of Labor.

Tom Perez was cleared by the HELP Committee over 2 months ago and should have been confirmed soon after, but we know that wasn't the case.

I am glad that Leader REID was able to break the nominations logjam this week so that we could begin confirming some very deserving nominees, including Tom Perez.

Tom Perez is the quintessential public servant. He is a consensus builder. As Secretary of Labor in Maryland, he brought together the chamber of commerce and Maryland labor unions to make sure workers received the level of wages and benefits they deserved and business had the skilled workforce they needed.

Most recently, he has served as Assistant Attorney General for the Civil Rights Division of the Department of Justice, where he increased prosecution of human trafficking by 40 percent, won \$50 million for servicemembers whose homes were improperly foreclosed on while they served, and settled the three largest fair lending cases in the history of the Fair Housing Act, recovering more money for victims in 2012 than in the previous 23 years combined.

He has spent his entire career in public service.

He is a Brown University graduate with a master's in public policy from the Kennedy School and a Juris Doctorate from Harvard Law.

He is an advocate for people with disabilities and won the largest ever disability-based housing discrimination settlement.

Tom Perez is a civil rights champion. He obtained the first convictions under the Matthew Shepard and James Byrd, Jr., Hate Crimes Prevention Act, and has always supported ending discrimination on the basis of sexual orientation.

Tom Perez is a good man and a good nominee. So let's do what we should have done a long time ago.

He is a qualified, competent, professional public servant, nominated by the President, and already confirmed by the Senate to the post he holds today.

As I said when I first endorsed Tom Perez, and I will say again today; he is an outstanding public servant, and I applaud President Obama for selecting him to be our Nation's next Secretary of Labor.

I have no doubt that he will continue the administration's efforts to create



jobs and get people back to work. Mr. Perez has dedicated his career to championing the rights of workers and all Americans, and I am confident that he will continue to do the same if confirmed.

As former Secretary of Labor in Maryland, Mr. Perez prioritized matching community colleges, labor unions, and the private sector to help get people jobs that are in demand today and in the future—an initiative that is much needed on a national scale, and something I have proposed in legislation that would close the skills gap by training workers with the skills needed to fill such jobs.

This is a remarkable nominee who brings a compelling personal story and a wealth of knowledge and leadership to the Department of Labor.

I am very pleased the time has finally come for good people like Tom Perez to get the up-or-down vote they deserve.

I urge my colleagues to vote to confirm this qualified nominee who has waited too long.

Ms. MIKULSKI. Madam President, I rise in support of one of Maryland's favorite sons, Mr. Tom Perez, the President's nominee to lead the Department of Labor. Mr. Perez has been the Assistant Attorney General for the United States and has also been Maryland's Secretary of Labor and Licensing and also was a member of the Montgomery County Council. All three of these jobs show his expertise and his ability to navigate some very complex situations. I believe he is the right man for the job.

I support his nomination, not only because he is one of Maryland's favorite sons, but because I believe he brings integrity, competency, and commitment to the mission of the Department of Labor.

His resume is outstanding. A Harvard Law School graduate. He has served in public service at the Federal, State, and county levels and he has a commitment to the mission of each agency.

In terms of personal background, it is really the story of America. His father came to this country under very difficult circumstances. His grandfather was one of the leaders of the voices of freedom in the Dominican Republic—punished for that and declared a persona non grata. But his father was able to stay in this country as a legal immigrant, go on to military service, and become a physician. And to show his gratitude to this country, he worked only for the Veterans Administration serving the country that saved him and his family.

Tom grew up with public service in his DNA. His father died when he was a young boy and he will tell that compelling narrative, but through the dint of hard work, a loving mother, and a nation that offered opportunity—he was able to work his way through school, get the scholarships, worked even as a trash collector during summer break to be able to advance himself.

He knows what the American dream is, but he also knows what hard work is, and he knows what an opportunity ladder we need to have in this country.

But in addition to that, he brings a great deal of skill—we know Tom at the Montgomery County Council level where government is closest to the people had to really govern best. And it is a complex, growing county where you had to work with public-private partnerships.

I admire Tom so much for his work as head of the Maryland Department of Labor. They now have a letter in the RECORD recommending Tom to be the Secretary of Labor. Why? Because he listens, he learns, and he brings everybody to the table for a pragmatic, fair, and collaborative work.

That is how he earned support from worker advocates and many of the Maryland's largest employers, the Maryland University System, the Maryland Association of Community Colleges, the Maryland Minority Contractors Association, and the Greater Baltimore Committee.

I am confident Tom Perez will be an excellent Secretary of Labor. I know he will be a strong voice for the working class and for keeping the government on the side of the people who need it. I urge my colleagues to support his nomination.

Mr. LEAHEY. Madam President, today the Senate will finally proceed to a confirmation vote on the nomination of Tom Perez to serve as Secretary of the U.S. Department of Labor. This vote continues the progress we made on executive nominees this week following our bipartisan caucus on Monday night. I am pleased that six Republican Senators joined with Democratic Senators to invoke cloture on this nomination on Wednesday, and now we can proceed to getting this well-qualified nominee confirmed to lead the Department of Labor.

Tom Perez is a dedicated public servant, and since 2009, he has worked hard to restore the reputation of the Civil Rights Division at the Justice Department. This was no small task after the prior administration had amassed one of the worst civil rights enforcement records in modern American history. Under the leadership of Attorney General Holder, Tom Perez has guided the Civil Rights Division back to its core mission of vigorous civil rights enforcement. He has many accomplishments to be proud of under his stewardship of the Division. Among them is his successful implementation of legislation I offered in the Senate, the Shepard-Byrd Hate Crimes Prevention Act, which was signed into law by President Obama just after Tom Perez was confirmed as the Assistant Attorney General for the Civil Rights Division in October 2009. Under Tom Perez's leadership, the Division implemented this important law and brought several important hate crimes prosecutions. Under his leadership, the Division has also been vigilant in pro-

tecting American homeowners against discriminatory predatory lending, and in protecting our men and women in uniform from foreclosure by lenders while overseas on active duty. He also led the Division to expand the number of human trafficking prosecutions by 40 percent during the past 4 years, including a record number of cases in 2012.

I have no doubt that Tom Perez will bring to the Labor Department the same leadership and commitment that he brought to the Civil Rights Division, and our Nation will be better for it. As a former Secretary of Labor in Maryland, and a fierce defender of workers' rights and civil rights, he is uniquely suited to serve in this important post at a critical time.

Mr. HARKIN. Madam President, I ask unanimous consent for 1 more minute to conclude my remarks.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HARKIN. In short, the Department of Justice has made all e-mails available for review. It is true Congressman ISSA has continued to repeat his requests, but that doesn't mean Mr. Perez and the administration have not been responsive, because they have.

The fact is this nominee has been more than thoroughly vetted. He has the character and the integrity and the expertise to lead the Department of Labor. The President has chosen Mr. Perez to join his Cabinet, and there is absolutely no reason why the Senate should not consent to this choice.

I am proud to support Mr. Perez's nomination. He will be an asset to the Department of Labor and to our entire country. I look forward to the opportunity to work with him in his new position to help all working Americans.

I yield the floor.

Mr. RISCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

There is a sufficient second.

The question is, Will the Senate advise and consent to the nomination of Thomas Edward Perez, of Maryland, to be Secretary of Labor?

The clerk will call the roll.

The assistant bill clerk called the roll.

The result was announced—yeas 54, nays 46, as follows:

[Rollcall Vote No. 178 Ex.]

YEAS—54

Baldwin	Franken	Markey
Baucus	Gillibrand	McCaskill
Begich	Hagan	Menendez
Bennet	Harkin	Merkley
Blumenthal	Heinrich	Mikulski
Boxer	Heitkamp	Murphy
Brown	Hirono	Murray
Cantwell	Johnson (SD)	Nelson
Cardin	Kaine	Pryor
Carper	King	Reed
Casey	Klobuchar	Reid
Coons	Landrieu	Rockefeller
Donnelly	Leahy	Sanders
Durbin	Levin	Schatz
Feinstein	Manchin	Schumer

Shaheen	Udall (CO)	Warren
Stabenow	Udall (NM)	Whitehouse
Tester	Warner	Wyden

## NAYS—46

Alexander	Enzi	Moran
Ayotte	Fischer	Murkowski
Barrasso	Flake	Paul
Blunt	Graham	Portman
Boozman	Grassley	Risch
Burr	Hatch	Roberts
Chambliss	Heller	Rubio
Chiesa	Hoeven	Scott
Coats	Inhofe	Sessions
Coburn	Isakson	Shelby
Cochran	Johanns	Thune
Collins	Johnson (WI)	Toomey
Corker	Kirk	Vitter
Cornyn	Lee	Wicker
Crapo	McCain	
Cruz	McConnell	

The nomination was confirmed.

The PRESIDING OFFICER. Under the previous order, the motion to reconsider is considered made and laid upon the table and the President will be immediately notified of the Senate's action.

The Senator from California.

#### NOMINATION OF REGINA MCCARTHY TO BE ADMINISTRATOR OF THE ENVIRONMENTAL PROTECTION AGENCY

Mrs. BOXER. Madam President, I ask that the Senate resume consideration of Calendar No. 98, the nomination of Regina McCarthy to be Administrator of the EPA.

The PRESIDING OFFICER. The clerk will report the nomination.

The legislative clerk read the nomination of Regina McCarthy, of Massachusetts, to be Administrator of the Environmental Protection Agency.

The PRESIDING OFFICER. Under the previous order, the time until 2:30 p.m. will be equally divided in the usual form prior to a cloture vote on the McCarthy nomination.

The Senator from California.

Mrs. BOXER. Madam President, as chairman of the EPW Committee, this is a day I have longed for for a long time. This has been the longest time the EPA has been without an Administrator in all of history. We could not have a more qualified nominee. We could not have a more bipartisan nominee.

The bottom line is Gina McCarthy has worked for five Republican Governors. She is a beloved individual. I wish to thank so many outside of this body who have weighed in on her behalf, including Christine Todd Whitman, the former Republican Administrator of the EPA, and Gov. Jodi Rell. It has meant a lot to Gina McCarthy. It has meant a lot to us who know that the EPA deserves a leader, and this woman Gina McCarthy deserves a promotion.

I will be back on the floor in about an hour or so just to make some more brief comments. But I wish to thank my colleagues from both sides of the aisle. We did avert a tough challenge for both parties. We averted that. I am very happy we did. One of the benefits of that agreement is we are having

votes on people as qualified as Gina McCarthy.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Madam President, I ask unanimous consent that after my remarks, Senator REED be recognized for up to 15 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. SESSIONS. Madam President, I would like to talk about the nomination of Gina McCarthy to serve as Administrator of the Environmental Protection Agency. I had the pleasure of meeting with her earlier in the confirmation process and talking with her at length about many important issues. She is experienced. I believe she is a good person. She has given her assurance that EPA would become more responsive—at least my interpretation of her response would be that—and her management has been encouraging.

However, the Environmental Protection Agency appointment is no small matter. The job of EPA Administrator has the potential to impact the life of every American in both positive and negative ways. For example, in the 1970s, Congress passed the Clean Air Act. It focused on pollutants. We were talking about NO<sub>x</sub> and SO<sub>x</sub>, sulphur oxide, nitrogen oxide, particulates, things that adversely affect the health of Americans.

At that point in time, we had no dream in our mind of a problem—global warming—that might arise and become a big issue in the future, nor did Congress have any inclination that carbon dioxide, plant food, that product in the atmosphere that plants take in and breathe out oxygen—we breathe in oxygen and out CO<sub>2</sub>—would be declared a pollutant.

By a 5-to-4 decision, the Supreme Court seemed to declare that, although it was not absolutely mandatory, EPA could regulate CO<sub>2</sub> under the Clean Air Act. EPA has seized that authority. They say that, for example, CO<sub>2</sub> is a pollutant. Congress has never voted to declare CO<sub>2</sub> a pollutant. I believe it is a stretch and an abuse of the Supreme Court's authority to interpret the law we passed in the 1970s as including that.

If CO<sub>2</sub> is a pollutant, as the EPA now assumes and asserts it is, every backyard barbecue, every lawnmower as well as every factory and plant in America is subject to their control because they are required to limit and control pollutants. This is how things happen in America.

So we have an unelected bureaucracy, the Environmental Protection Agency, virtually unaccountable to the public, often refusing steadfastly to produce reasonable answers to inquiries put to them by the Congress. They dictate matters that impact every person in America. It is an awesome power. It is something too little discussed in America.

I am going to talk about another subject briefly. I understand Ms. McCarthy

and her experience. She is going to be elevated now from EPA's Air Office, where they have been hammering coal, hammering natural gas, and other fuels, carbon fuels, in their regulations to a degree that it is driving up the cost for every American to obtain energy, their electricity, their automobiles, and the heating in their homes.

I wish to focus for a few minutes on a central problem at the EPA: its disregard for Congress, the law as written, and the use of unlawful agency guidance.

Agency guidance. These are documents they issue to effectively rewrite the law in a way that favors the administration's policies and political agenda. That is what we are seeing too much of. People say: Oh, they just do not like the EPA. All of these complaints from farmers and businesses, it is all just overreaction. Those are guys who want to pollute the atmosphere and the farmlands and do all of these things. They are not reasonable people.

Most Americans are not dealing face-to-face with the guidance, the regulations of the EPA officials who attempt to dictate so much of what they do. There is perhaps no better illustration of the dynamic than in the context of the administration's effort to grasp control over every ditch, stream and creek and pond in the country.

We actually had a vote on this issue in May during the debate on the Water Resources Development Act. I joined with my colleague Senator BARRASSO in introducing an amendment, the Barrasso-Sessions amendment No. 868 to the Water Resources Development Act. A clear majority of the Senate, 52 Members, voted for our amendment that would stop EPA from implementing an agency guidance document that would vastly expand the Agency's jurisdiction over the Clean Water Act.

So they issue a guidance, direct it to all of their subordinates, and tell them how the law is to be enforced. So actually it becomes a new law; it becomes the effect of an actual statute. First, the problem with what they have been doing is it is contrary to the plain reading of the statute, the Clean Water Act.

This law, enacted in 1972, requires a Federal permit for activities impacting navigable waters—navigable waters. That is what is in the statute, which Congress has defined as waters of the United States. EPA's guidance document broadly interprets this term—broadly interprets it and would give Agency employees throughout the country the authority to make case-by-case determinations with virtually no jurisdictional limits whatsoever.

I recently asked Ms. McCarthy about this issue. She did not detail her views. She would not answer specific questions.

The Supreme Court has ruled several times on the meaning of this jurisdictional term, most recently in its 2006 decision, just a few years ago, *Rapanos*